

SECTION 10

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PROCUREMENT REQUIREMENTS

Sponsors must comply with existing federal, state and local procurement requirements. The underlying foundation of all procurement is that regardless of the method used, the procurement is conducted in a manner that provides maximum open and free competition. Procurement procedures shall not restrict or eliminate competition. Examples of competitive restrictions include, but are not limited to:

- ❖ Placing unreasonable requirements on firms in order for them to qualify to do business;
- ❖ Procurement practices which encourage or foster noncompetitive practices, e.g. collusion between firms;
- ❖ Organizational conflicts of interest which can occur when the individual(s) responsible for determining bid/proposal responsiveness can be overruled by another individual within the organization;
- ❖ Inappropriate practices such as entering into negotiations with a firm prior to evaluating proposals, negotiating with any bidder at any time when the competitive sealed bid procurement method is used, providing only certain firms with the results of pre-bid meetings or releasing the contents of a bid/proposal to other bidders/proposal offerors; and
- ❖ Unnecessary experience and bonding requirements.

Procurement Procedures

1. For purchases less than \$5,000 - bidding is not essential, but sponsors should utilize procedures that provide adequate and reasonable competition.
2. For purchases between \$5,000 and \$15,000 – solicit at least three verbal quotes.
3. For purchases between \$15,000 and \$31,338.70 – solicit at least three written quotes.
4. For purchases over \$31,338.70 for an item or one type of item, e.g., milk, bread – solicit sealed bids or proposals through a competitive process.

TYPES OF PROCUREMENT

The two most frequently used methods of procurement are:

1. Competitive sealed bid, which uses an Invitation for Bid (IFB), and
2. Competitive negotiation, which uses a Request for Proposal (RFP).

Regardless of the method used, the sponsor must be able to provide a clear, complete, adequate, and realistic description of services/products desired under the contract.

Competitive Sealed Bid/Invitation for Bid (IFB)

This method is the best method to use when the sponsor wishes to have a fixed or firm price contract. This method of contracting cannot contain cost reimbursable provisions, including combinations of fixed fee and cost reimbursable provisions, even when those provisions contain a cap.

Factors to consider for competitive sealed bids are:

1. The sponsor has identified exactly which services/products it wishes to contract for.
2. The sponsor either does not wish or lacks the needed experience to negotiate price and contractual responsibilities with the contractor.
3. More than one contractor is willing and able to compete effectively for the contract.
4. Because the bid will be awarded to the responsible firm that submits the lowest responsive bid, the sponsor must include sufficient information in the IFB to allow the sponsor to determine whether the bid conforms to the IFB. The invitation must include the factors the sponsor had identified and the minimum level of performance or experience that the contractor must demonstrate.

While overly restrictive requirements must be avoided in order to ensure adequate competition, poorly identified criteria can result in firms that are not able to successfully perform under the contract receiving the award. The sponsor must use criteria that are measurable and the IFB must indicate how bidders will demonstrate compliance with these criteria. Normally this means establishing minimum levels. Open-ended criteria cannot be used in IFBs.

5. The place and time the bids will be awarded must be included in the invitation, as well as, any information concerning pre-bid meetings, requirements for bid and/or performance bonds, the amount of the bond, requirements concerning the bonding firm, and when the bond(s) must be provided to the sponsor.

Advantages of the Competitive Sealed Bid/Fixed-Price Contract

1. The contract is prepared prior to soliciting bids. This generally allows the sponsor to more accurately estimate costs and identify staff resources which must be assigned to the food service operation well in advance of the effective date of the contract.
2. The pre-bid preparation of the contract permits the sponsor to arrange for its legal authorities to review the contract provisions for legal sufficiency without the pressures of negotiation.
3. Because the contract is prepared prior to soliciting bids, the sponsor review of the contract is completed prior to announcing the IFB, which allows the sponsor to award the contract immediately after the bid opening, pending board approval, if applicable.

4. Fixed-price contracts permit the sponsor to identify anticipated revenues and expenses, as well as the total anticipated cost of the contract.
5. The sponsor is relieved from negotiating both the cost and responsibilities with bidders.

Disadvantages of the Competitive Sealed Bid/Fixed-Price Contract

1. If the bid document does not clearly identify the services/products requested, the bid prices and the services/products provided by the contractor may not be reasonable or reflective of the sponsor's needs.
2. If the sponsor is unable to determine which responsibilities it should maintain, it cannot negotiate these items with the bidders.
3. During periods of rapidly rising prices, prospective bidders may decline to bid on a fixed-price basis or bid overly high. In situations where prices are declining, fixed-price contracts do not allow the sponsor to benefit from the decline.

Competitive Negotiation/Request for Proposal (RFP)

This method is effective when the sponsor has identified what it expects a contractor to accomplish, but has not identified how it will be accomplished. Competitive negotiation is effective only when the sponsor will actually negotiate with prospective offerors.

Factors to consider for using competitive negotiation are:

1. The sponsor must possess the technical skills necessary to evaluate the proposals and negotiate with the offerors.
2. The sponsor's legal authority must be available to assure that the proposed contractual language reflects the agreement reached between the successful offeror and the sponsor.
3. Under a cost reimbursable contract, the sponsor must independently monitor the costs incurred under the contract for compliance with the appropriate OMB circulars, regulations and instructions.
4. The criteria that will be used to evaluate the proposals must be carefully prepared and included in the RFP. These criteria must be followed in evaluating the proposals.
5. The due date for proposal submission must be included in the request as well as any information concerning proposal meetings, if a performance bond will be required, the amount of the bond, and any requirements concerning the bonding firm.

Advantages of Competitive Negotiation/RFP

1. Allows the sponsor to decide whether or not the contractor should perform certain function based upon the responses received from the offerors.
2. RFPs that result in cost reimbursable contracts allow the sponsor to take advantage of price declines during periods of falling prices.
3. Allows more flexibility in selecting a contractor because the sponsor is not limited to selecting the offeror which submits the lowest price bid.

Disadvantages of Competitive Negotiation/RFP

1. The monitoring of revenue and expenses under the contract will be more complicated.
2. The contract is based upon the negotiations. A contract with a food service management company should not be finalized until the CNP office reviews the document.
3. The negotiation process requires that the sponsor possess experience and skill in contracting and financial management. Attempting to negotiate without the needed expertise can result in the sponsor entering into a contract that meets regulatory requirements but is detrimental to the sponsor.
4. Since the sponsor has not identified whether it or the contractor will perform certain functions, the sponsor may incur duties and related costs not planned or budgeted.

PURCHASING METHODS

Line Item Purchasing

This is method is commonly used in food service. A buyer requests bids on a line by line basis, at a fixed price for deliveries to be made over a period (usually one to three months), after which bids are solicited again. This is often referred to as "Formal Bid Against Specification."

Purchasing by Item Groups

Buyers may purchase supplies in item groups at fixed prices. Items are best grouped according to sources of supply. Traditionally produce, milk, ice cream, and bread are purchased in separate groups to accommodate firms who specialize in each of these product lines. Milk, ice cream and bakery products are usually purchased on annual contracts. Other item groups, i.e., canned and frozen fruits and vegetables are purchased for shorter time periods. Bid awards are made on the basis of bottom line per group.

Lump Sum Purchasing

Lump sum purchasing is commonly used by sponsors with warehouses. Items are purchased on a line item basis for lump sum delivery. Bids stipulate the purchase of specific amounts of each item or fixed prices for one, two or three delivery dates. Deliveries are often made on exchangeable pallets. Often the lump sum is bought directly from the packer.

FOOD PURCHASED FOR SCHOOL FOOD SERVICE PROGRAMS

All purchased food and USDA donated foods are the property of the National School Lunch Program and/or the School Breakfast Program. Food (including leftovers) and goods may not be removed from the school by employees. Purchased and donated foods lost through theft, destruction or spoilage may not be claimed in the cost of operation. Notify police if there is a USDA donated food theft. See *Loss, Spoiled, or Damaged Commodities*, Section 14.

Purchasing For Personal Use

The food service operation should be operated in a businesslike manner. The money received as reimbursement for these programs is public tax money. Therefore, food service employees are subject to scrutiny from taxpayers.

The CNP office discourages sponsors from allowing employees to purchase food or supplies for personal use from school vendors since:

1. It could be a conflict of interest. The purchaser may have a feeling of responsibility to do business with the vendor.
2. It could be unfair competition. The tax-paying grocer in your community would look at it this way.
3. It could be considered a special benefit. All the taxpayers in your community do not have this benefit.
4. It could appear to be theft from the school. Someone who sees such purchases leaving the school is unaware that the items were not bought by the school.

Procurement Code of Standards

Sponsors must establish procedures for the purchase of food, supplies, equipment and other services with Program funds. This is to ensure materials and services are obtained efficiently, economically and in compliance with federal and state laws. Public schools must follow procedures as prescribed in the Arizona School District Procurement Rules.

The written code of standards must address the following:

1. The sponsor's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors.
2. Penalties or other disciplinary actions will be applied for violation of the above.

See Exhibit A for a sample *Procurement Policy, Code of Standards*.

BUY AMERICAN REQUIREMENT

Sponsors participating in the National School Lunch Program must purchase, whenever possible, only food products that are produced in the United States (U.S.). A “food product produced in the U.S.” is defined as “an unmanufactured food product produced in the U.S. or a food product that is manufactured in the U.S.”

Two situations permit purchases of foreign products: 1) the product is not produced or manufactured in the U.S. in sufficient and reasonable available quantities of a satisfactory quality; and 2) competitive bids reveal the cost of a U.S. product is significantly higher than the foreign product. Subject to these two exemptions, purchases must at least be proportionate with the extent of Federal funding in the school food service account.

To ensure products are of U. S. origin sponsors should:

- ❖ check their purchasing specifications,
- ❖ remind their vendors and distributors of the “Buy American” requirement, and
- ❖ examine product packaging for country of origin. The *Nutrition Labeling and Education Act of 1990* mandates that the country of origin for both domestic and imported food products be identified on the product labels.

The “Buy American” requirement benefits children by ensuring that high quality foods are available in school meal programs and supports American agriculture.

Procurement Policy

Code of Standards

(SAMPLE)

Any officer, employee, or agent of the (School Food Authority), who has occasion to handle school food or monies, shall perform his/her duties in a manner consistent with good business practices. This shall include prohibition of:

1. Solicitation or acceptance of gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements.
2. Participation in awards or administration of contracts to firms in which the employee, or any member of his/her immediate family, has financial or other interest.

Where financial interest is not substantial, or the gift is unsolicited and of nominal intrinsic value, such interest shall be documented and approved by (School Food Authority), before acceptance.

Penalties or other disciplinary actions for infractions of this policy will be based on the seriousness of the violations. Disciplinary actions may include, but are not limited to:

1. Written disciplinary report filed individual's personnel file;
2. Suspension of duties;
3. Termination of employment;
4. Prosecution by legal authorities.

Distribution Instruction

This policy shall be incorporated into the General Operation Policy Manual of the (School Food Authority), dated_____, and shall be reviewed annually by the Executive Director or School Board. Copies of this policy are to be distributed to all personnel who have occasion to handle school food, monies, or supplies, together with their supervisors and program directors.

Signature